IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.657 OF 1995

The Municipal Corporation of Greater Bombay]..Appellant (Ori.Complainants)

Versus

1. Shri.Uttamlal Fulchand Vakharia M/s. Vakharia Metal Industries, Deochand Nagar, Maji Bapu Road, Malad (E) Bombay-400097]..Respondent (Ori.Accused)

2. State of Maharashtra]..Respondent

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Mr.H.C.Pimple, Advocate for the Appellant
Mr.A.S.Shitole, A.P.P. for the State.
None for Respondent no.1.

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant i.e. Bombay Municipal Corporation has challenged the judgment and order dated 5th April, 1989 passed by the learned Metropolitan Magistrate, 39th Court, Vile Parle, Mumbai in Case No. 360/MH/1983. By the said judgment and order, the learned Magistrate acquitted

the respondent no.1 i.e. original accused under Section 390 read with Section 471 of the Bombay Municipal Corporation Act. (In short 'B.M.C.Act').

2. Briefly stated the prosecution case is as under:

. That on 17th January, 1983 at Devchand Nagar, Haji Babu Road, Malad (E) Bombay, the factory M/s. Vakharia Metal Industries was working without valid permit as required under Section 390 of B.M.C.Act. Hence, the complaint came to be filed against the respondent no.1-accused.

3. The particulars of the offence under section 390 read with Section 471 of B.M.C.Act were explained to the accused. He pleaded not guilty and claimed to be tried.

4. The defence of the accused is that he was having valid permit as required under Section 390 of B.M.C.Act and before expiry of said permit, he filed an application for renewal of the permit but B.M.C. did not renew the permit without any just reason and illegally demanded Rs.1,000/- which was not paid. The further defence of the accused is that the factory is pre-merger factory and it was established in the year when the area of Malad was not included

in the area of B.M.C.

5. I have heard Mr.H.C.Pimpale, learned advocate for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State. None appears for the respondent no.1 though served. I have also perused the record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

6. The prosecution has examined three witnesses in support of its case. P.W.1 Pratap Baburao Parab was a Junior Engineer in B.M.C. at the relevant time. It has come in the evidence on record that till the date of the offence, B.M.C. did not revoke or suspend the permit granted to the accused under Section 390 of B.M.C.Act. In such case, it cannot be said that on 17th January, 1983 the factory was being run without a valid permit under Section 390 of the B.M.C.Act. It is obvious that till the permit is revoked or suspended by the competent authority, the licensee need not cease to do the trade. On behalf of the accused, reliance is placed on the decision in Criminal Appeal No. 594 of 1972 in which the Full Bench of this Court dealt with the point relating to pre-merger factories with reference to Section 390(1) of B.M.C.Act and decided

the same. In the said matter, the A.G.P. stated that B.M.C. is willing to withdraw all prosecutions pending under Sections 340 read with Section 471 and 472 of B.M.C.Act in case of pre-merger factories. It is an admitted fact that on 17th January, 1983 the premises where the factory was situated, was not included in the area of Bombay Municipal Corporation.

7. Now I shall proceed to deal with the evidence of Sub-Engineer P.W.1 Pratap Parab. Shri.Parab deposed before the Court that on 17thJanuary, 1983 when he visited the factory premises, the said factory was working without permit under Section 390 of B.M.C.Act. In his cross-examination, this witness has admitted that he did not have the authority for inspection. He has also admitted that the factory was having a permit under Section 390 of B.M.C.Act. He has also admitted that it is a pre-merger factory. P.W.1 Pratap Parab is the star witness in this case on whose inspection, the case was built up. From the evidence of P.W.1 Pratap Parab, it is evident that no authority was produced by P.W.1 during the course of his evidence under Section 390 or 488 of the B.M.C.Act. This witness has admitted in his cross-examination that the permit of the accused was not revoked by B.M.C. and it was only

now that the show cause notice was given to the accused as to why his permit could not revoked. From the testimony of P.W.1 Pratap Parab, it becomes clear that the permit of the accused under Section 390 of the B.M.C.Act was never revoked nor suspended by B.M.C. at any point of time. The fact that a renewal application was made by the accused was also admitted by P.W.1 Pratap Parab.

8. From the evidence of P.W.1 Pratap Parab who inspected the factory on 17th January, 1983, it is evident that P.W.1 Pratap Parab had no authority under Section 390 of B.M.C.Act. P.W.1 Pratap Parab was accompanied by P.W.2 Shri.B.N.Desai, Sub-Engineer, Vigilance Department. P.W.2 Desai corroborates the version of P.W.1 Pratap Parab regarding inspection of the factory on 17th January, 1983. It is on the basis of the inspection report prepared by P.W.1 Pratap Parab, Offencesheet Exhibit-B was prepared. Though P.W.1 Pratap Parab says that he is authorised to do the inspection, however, he did not file his authority on record. In view of this and the other evidence which has come on record, the view taken by the learned Magistrate that the inspection by P.W.1 Pratap Parab is not permitted by law and hence, it cannot be looked into cannot be said to be totally erroneous.

Similarly the view of the learned Magistrate that report Exhibit-8 which was prepared on the basis of inspection also cannot be looked into and hence, this fact is also fatal to the prosecution, is a reasonable view.

9. The learned Magistrate has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

10. In the circumstances, I find no merit in this appeal and the same is dismissed. The judgment and order of acquittal passed by learned Metropolitan

Magistrate, 39th Court, Vile Parle, Bombay in Case No. 360/MH/1983, is confirmed. The bail bonds of the accused shall stand cancelled.

[SMT.V.K.TAHILRAMANI,J.]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO. 657 OF 1995
(The Municipal Corporation of Gr.Bombay Vs. Shri.U.L.Vakharia and another)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.H.C.Pimple
Advocate for Appellant
Mr.A.S.Shitole, A.P.P. for State No.2
None for respondent no.1

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : DECEMBER 1, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The appeal is dismissed. The judgment and order of acquittal passed by learned Metropolitan Magistrate, 39th Court, Vile Parle, Bombay in Case No. 360/MH/1983 is confirmed. The bail bonds of the accused shall stand cancelled.

(V.K.TAHILRAMANI,J.)